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*Rec'd & Filed
May 8, 1978
C. F. Hurc*

STATE OF WISCONSIN

BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS' SECTION)

IN THE MATTER OF THE LAND SURVEYOR'S
LICENSE OF DAVID J. ELGIN, RESPONDENT
(S-1169)

ORDER **77**

Findings of Fact, Conclusions of Law and Order of
Revocation having been entered in this matter on October 31, 1977,
now upon the Petition of David J. Elgin for Vacation of
such Order or, in the alternative, Petition for Reduction
in the Severity of such Sanction;

The Land Surveyors' Section of the Examining Board
having considered the Petition and Record herein, hereby
enters its Order denying such Petition pursuant to A-E 3.26,
Wis. Adm. Code.

Dated this 8th day of May, 1978.

EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS,
DESIGNERS AND LAND SURVEYORS

BY:

C. F. Hurc
C. F. HURC, Secretary

Rec'd & Filed
November 30, 1977
D. J. Elgin
STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS,
DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS SECTION)

IN THE MATTER OF THE LAND	:
SURVEYORS LICENSE OF	:
David J. Elgin	:
(S-1169)	:

	:
PETITION	:

David J. Elgin, Respondent in the captioned matter, hereby submits the attached as his petition under Wis. Adm. Code sec. A-E 3.25 for the vacation, or in the alternative, the reduction in severity of the sanction ordered by the Board in this matter.

November 29, 1977

David J. Elgin

Subscribed and sworn to before
me this 29 day of November, 1977

William Pharis Horton
William Pharis Horton
Notary Public, State of Wisconsin
My commission is permanent

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS
DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS SECTION)

IN THE MATTER OF THE LAND
SURVEYORS LICENSE OF
David J. Elgin
(S-1169)

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As his petition for vacation of the sanction ordered in the captioned matter, Respondent David J. Elgin alleges as follows:

1. That certain technical and clerical errors, more specifically enumerated in the Complaint in this matter, did exist in the plat of Park View Subdivision.
2. That these technical errors rendered the plat not proper for recordation under the laws and administrative rules of the State of Wisconsin.
3. That although it included technical errors, the plat could be retraced from the information provided.
4. That the technical errors stemmed primarily from differences between the platting procedures of the State of Iowa and the State of Wisconsin.
5. That Respondent was aware of the probability of the plat's containing technical errors and had been advised by representatives of the Department of Local Affairs and Development that these errors could be discovered on Department review and corrected for resubmission.
6. That it was at no time his intention that the plat containing these technical errors be recorded and that he stood ready to make such corrections as the Department of Local Affairs and Development should request.
7. That the platting of a street right of way at a width less than that required by statute or ordinance was done with the understanding that the ordinance was to be amended and Respondent knew and advised his client that this was a defect in the plat until the ordinance was amended.
8. That the plat as recorded was released to his client for the purposes of supporting a presentation to the City Council on the street width ordinance.

9. That orally and in writing Respondent advised his client and the client's attorney that the plat could not be properly recorded until reviewed by the Department of Local Affairs and Development.
10. That he was assured upon release of the plat to his client that the client and the client's attorney would submit the plat for all necessary reviews and obtain all necessary approvals.
11. That he relied on their assurance.
12. That this reliance was consistent with platting procedures in the State of Iowa and that he was neither aware of nor had he found in Wisconsin law or administrative rules, including Wis. Adm. Code Chap. A-E 4 and 5, any evidence of a contrary standard in the State of Wisconsin.
13. That despite his written and oral instructions to the contrary, his client and his client's attorney offered the uncorrected plat for recordation; and that despite the provisions of Wisconsin law, local officials approved and accepted it for recordation.
14. That upon being advised of the recordation of the plat and ever since then Respondent has offered and stood ready to take whatever steps may be necessary to correct the plat and avoid loss and inconvenience to those interested in it.
15. That preparation of the plat containing the errors noted was neither incompetency nor misconduct, as these terms are defined in Wis. Adm. Code Chap. A-E 4, since it was intended that any deficiencies objected to on review by the Department of Local Affairs and Development would be corrected before the plat was submitted for record and that Respondent reasonably relied upon the advice of representatives of the Department to proceed in this way.
16. That the standard of practice relied upon in concluding Respondent's acts constituted gross negligence, as defined in the Administrative Code, is nowhere reduced to a law, rule or guideline, is at variance with practices in other states and is not of the kind with which a registrant should be presumed to be acquainted.

17. That Respondent took appropriate and reasonable steps to advise those directly involved of their obligations and placed reasonable reliance in their assurances and in the belief that local officials acting under the law would reject a plat not properly reviewed.
18. That, in retrospect, the reliance by Respondent, which was reasonable in light of the conditions and circumstances at the time, was not justified by later happenings and although reasonable this reliance does not fully exonerate Respondent as one link in the chain of events which resulted in the recording of an improper plat; but that the conclusions and order of the Board are out of all proportion to the nature and extent of any culpability of Respondent.

MURPHY, STOLPER, BREWSTER & DESMOND, S.C.
P. O. Box 2038
2 East Gilman Street
Madison, WI 53701

Attorneys for Respondent.

COPY

STATE OF WISCONSIN

BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS' SECTION)

IN THE MATTER OF THE LAND SURVEYOR'S
LICENSE OF DAVID J. ELGIN, RESPONDENT
(S-1169)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above entitled proceeding having come on for hearing before the Land Surveyors' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors at the Board Offices at 1400 East Washington Avenue, Madison, Wisconsin, on October 4, 1977, pursuant to Notice of Hearing containing the issues involved and charges to be considered, duly served upon the respondent, David J. Elgin, and respondent having filed answer on August 23, 1977, and having appeared in person, and the Land Surveyors' Section of the Examining Board, represented by Lowell E. Nass, Assistant Attorney General, having heard the evidence presented by William Dusso, Board Counsel, in support of said charges, and the evidence presented by respondent, in opposition thereto, and the Board having considered the pleadings, testimony, exhibits, arguments, and proceedings herein, hereby makes and files its Findings of Fact, Conclusions of Law and Order, constituting its decision in this matter.

FINDINGS OF FACT

1. That respondent, David J. Elgin, hereinafter Elgin, whose address is 240 South Hill, and P.O. Box 767, Dubuque, Iowa 53001, is, and was at all times hereinafter mentioned, duly registered by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors under the provisions of sec. 443.02, Wis. Stats., as a land surveyor, holding Certificate of Registration No. S-1169;

2. That prior to March 1, 1976, Elgin prepared or supervised the preparation of a land subdivision plat entitled "Park View Subdivision" depicting a subdivision of land described as Part of Farm Lot 35 of the Private Land Claims in the City of Prairie du Chien, Crawford County, Wisconsin, and referred to hereinafter as "Park View Subdivision," a copy of which is attached to the Complaint herein;

3. That said plat of Park View Subdivision is deficient in the following respects:

A. That monuments placed in the field at the southwest and southeast corners of Michigan Street, at the northwest and southwest corners of Park View Court, at the northwest corner of Michigan Street (at lot 9), and at each end of the 50 foot radius turnaround on Park View Court do not meet the minimum requirements for monumentation provided in sec. 236.15 (1)(b), Stats.;

B. That the error in latitude and departure closure of the survey of lots 5, 6, 16 and 17 and of the metes and bounds description in the Surveyor's Certificate is greater than the ratio of 1 in 3,000, contrary to sec. 236.15(2), Stats.;

C. The width of Park View Court does not meet the minimum street width requirements of sec. 236.16(2), Stats., or of local ordinances;

D. The plat does not show all lengths and bearings required by sec. 236.20(2)(c), Stats.;

E. The plat does not show lots in each block consecutively numbered as required by sec. 236.20 (2)(e), Stats.;

F. The north point shown on the plat is not identified as referenced to a magnetic, true or other identifiable meridian as required by sec. 236.20(2)(i), Stats.;

G. The plat does not show any exterior boundary angles, block angles, angles between a curve and its tangent, all required to be shown on the plat by sec. 236.20(2)(j), Stats.;

H. The plat does not show all curve data required to be shown by sec. 236.20(2)(k), Stats.;

I. The plat does not show the exact location of the subdivision by distances and bearings with reference to a corner or corners established in the United States Public Land Survey as required by sec. 236.20(3)(b), Stats.;

J. The plat does not include a small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon as required by sec. 236.20(3)(c), Stats.;

K. The plat does not show the information required by sec. 236.20(3)(e) and (f), Stats., namely the right angle widths of all abutting streets, abutting street names underlined with black dotted lines, the platted status of lands lying west of Minnesota Street, north of lot 30, north of lot 11, north of lots 12-17 and east of lots 18, 19 and 29;

L. The description of the land surveyed included in the Surveyor's Certificate of Compliance with Statute does not commence with some corner marked and established by the U.S. Public Land Survey contrary to sec. 236.21(1)(b), Stats.;

M. The plat was not prepared on muslin-backed white paper as required by sec. 236.20, Stats.;

4. That the Park View Subdivision plat was recorded with the Register of Deeds for the County of Crawford without having been submitted to and reviewed by the Department of Local Affairs and Development;

5. That Elgin did not complete, sign, seal and file Form DLAD-Pl, Request for Land Subdivision Plat Review;

6. That when preparing a subdivision plat pursuant to ch. 236, Stats., it is an accepted standard of practice of the land surveying profession in Wisconsin for land surveyors to exercise control of said subdivision plat sufficient in degree such that the subdivision plat is not recorded in the office of the county register of deeds without the plat first having been submitted and reviewed by the governmental bodies required to review the plat;

7. That Elgin did not exercise sufficient control of the Park View Subdivision plat and that said plat was recorded in the office of the county register of deeds without first having been submitted and reviewed by the governmental bodies required to review the plat;

8. That said accepted standard of practice described in paragraph 6 above has a significant relationship to the protection of the public health, safety and public welfare;

9. That Elgin knew or should have known of the accepted standard of practice described in paragraph 6 above, but that he acted with indifference to or disregarded said accepted standard of practice.

CONCLUSIONS OF LAW

1. That preparation by Elgin of a subdivision plat with the deficiencies described in paragraphs 2 and 3 above, constitutes incompetency and misconduct in the practice of land surveying, within the meaning of A-E 4.003(1) and (3), Wis. Adm. Code, and respondent is therefore subject to penalty as provided by sec. 443.02 (8), Stats.;

2. That Elgin's conduct as described in paragraphs 7, 8 and 9 above constitutes gross negligence in the practice of land surveying, within the meaning of A-E 4003(2), Wis. Adm. Code, and respondent is therefore subject to penalty as provided by sec. 443.02(8), Stats.

ORDER

IT IS ORDERED that the Certificate of Registration of David J. Elgin, numbered S-1169, be revoked and that respondent may apply for reissuance of said certificate of registration after 12 months from the date of revocation of said certificate, said revocation to take effect 30 days from the date of service of this Order by certified mail.

Let a copy of these Findings of Fact, Conclusions
of Law and Order be served by certified mail upon
David J. Elgin.

Dated this 31st day of October, 1977.

EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS,
DESIGNERS AND LAND SURVEYORS.

BY:


C.F. Hurc, Secretary

Rec'd 271 1-2
May 12, 1977

MAY 12 1977

George A. James

Extra copy

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS,
DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS SECTION)

IN THE MATTER OF THE LAND
SURVEYORS LICENSE OF
David J. Elgin
(S-1169)

COMPLAINT

The State of Wisconsin, Department of Local Affairs and Development, by
George A. James, complains against the respondent, David J. Elgin, and
alleges:

1. That George A. James is the head of the planning function of the Department of Local Affairs and Development, an agency of the State of Wisconsin, and complains for the Department in his capacity as head of the planning function;
2. That the post office address of the Department of Local Affairs and Development is 123 West Washington Avenue, Madison, Wisconsin 53702;
3. On information and belief that respondent, David J. Elgin, hereinafter Elgin, whose address is P. O. Box 767, Dubuque, Iowa 53001, is, and was at all times hereinafter mentioned, duly registered by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors under the provisions of s. 443.02, Wis. Stats. as a land surveyor, holding Certificate of Registration number S-1169;
4. On information and belief that prior to March 1, 1976, Elgin prepared or supervised the preparation of a land subdivision plat entitled "Park View Subdivision" depicting a subdivision of land described as Part of Farm Lot 35 of the Private Land Claims in the City of Prairie du Chien, Crawford County, Wisconsin and referred to hereinafter as "Park View Subdivision," a copy of which is attached hereto;
5. On information and belief that the plat of Park View Subdivision is deficient in the following respects:
 - A. That monuments placed in the field at the southwest and southeast corners of Michigan Street, at the northwest and southwest corners of Park View Court, at the northwest corner of Michigan Street (at lot 9), and at each end of the 50 foot radius turnaround on Park View Court do not meet the minimum requirements for monumentation provided in s. 236.15(1)(b);
 - B. That the error in latitude and departure closure of the survey of lots 5, 6, 16 and 17 and of the metes and bounds description in the Surveyor's Certificate is greater than the ratio of 1 in 3,000, contrary to s.236.15(2), Wis. Stats;

- C. The width of Park View Court does not meet the minimum street width requirements of s.236.16(2), Wis. Stats. or of local ordinances;
- D. The plat does not show all lengths and bearings required by s.236.20(2)(c), Wis. Stats.;
- E. The plat does not show lots in each block consecutively numbered as required by s.236.20(2)(e), Wis. Stats.;
- F. The north point shown on the plat is not identified as referenced to a magnetic, true or other identifiable meridian as required by s.236.20(2)(i), Wis. Stats.;
- G. The plat does not show any exterior boundary angles, block angles, angles between a curve and its tangent, all required to be shown on the plat by s.236.20(2)(j), Wis. Stats.;
- H. The plat does not show all curve data required to be shown by s.236.20(2)(k), Wis. Stats.;
- I. The plat does not show the exact location of the subdivision by distances and bearings with reference to a corner or corners established in the United States Public Land Survey as required by s.236.20(3)(b), Wis. Stats.;
- J. The plat does not include a small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon as required by s.236.20(3)(c), Wis. Stats.;
- K. The plat does not show the information required by s.236.20(3)(e) and (f), namely the right angle widths of all abutting streets, abutting street names underlined with black dotted lines, the platted status of lands lying west of Minnesota Street, north of lot 30, north of lot 11, north of lots 12-17 and east of lots 18, 19 and 29;
- L. The description of the land surveyed included in the Surveyor's Certificate Of Compliance With Statute does not commence with some corner marked and established by the U.S. Public Land Survey contrary to s.236.21(1)(b), Wis. Stats.;
- M. The Owner's Certificate does not list the Division of Highways, Department of Transportation as a governing body having authority to object to the plat contrary to s.236.21(2);
- N. The plat was not prepared on muslin-backed white paper as required by s.236.20, Wis. Stats.;

6. That the Park View Subdivision plat was recorded with the Register of Deeds for the County of Crawford without having been submitted to and reviewed by the Department of Local Affairs and Development;

7. That preparation of a subdivision plat with the deficiencies described in paragraph 5, above, constitutes incompetency and misconduct in the practice of land surveying;

SECOND CAUSE FOR DISCIPLINARY ACTION

For the second cause for disciplinary action, there are repeated all the allegations in paragraphs (1) through (4) and (6) and in addition:

8. That when preparing a subdivision plat pursuant to Chapter 236, Wis. Stats. it is an accepted standard of practice of the land surveying profession in Wisconsin for land surveyors to exercise control of said subdivision plat sufficient in degree such that the subdivision plat is not recorded in the office of the county register of deeds without the plat first having been submitted and reviewed by the governmental bodies required to review the plat;

9. On information and belief that Elgin did not exercise sufficient control of the Park View Subdivision plat and that said plat was recorded in the office of the county register of deeds without first having been submitted and reviewed by the governmental bodies required to review the plat;

10. That said accepted standard of practice described in paragraph 8 above has a significant relationship to the protection of the public health, safety and public welfare;

11. On information and belief, that Elgin knew or should have known of the accepted standard of practice described in paragraph 8 above, but acted with indifference to or disregarded said accepted standard of practice;

12. That Elgin's conduct as described in paragraphs 9 and 11, above, constitutes gross negligence in the practice of land surveying.

WHEREFORE Complainant requests that the Land Surveyors' Section of the Examining Board hear evidence relevant to matters recited herein and determine whether the license of respondent should be revoked or suspended, or whether respondent should receive an official reprimand.

Dated this 10th day of May, 1977.

George A. James
George A. James, Director
Community Development, Department of
Local Affairs and Development

STATE OF WISCONSIN)
COUNTY OF DANE)

George A. James, being first duly sworn, on oath deposes and says that he is head of the planning function of the Department of Local Affairs and Development, State of Wisconsin, and is duly authorized to make this verification, that he has read the foregoing complaint and knows the contents thereof, that the same is true to his own knowledge, except as to those matters alleged on information and belief, and as to those matters, he believes it to be true.

George A. James
George A. James

Subscribed and sworn to before me
this 16th day of May, 1977.

James A. McConnel
Notary Public, Dane County, WI
My Commission 1976